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Federal Communications Commission
Washington, D.C. 20554

*Amazing Center
4 level*

Aug 22 11 20 AM '00
August 11, 2000

Henry E. Crawford
Smithwick & Belendiuk, PC
1990 M Street, NW, Suite 510
Washington, D. C. 20036

Dear Mr. Crawford:

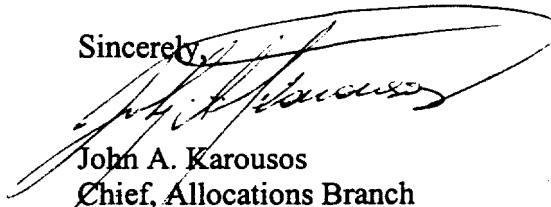
This is in response to the Petition for Rule Making you filed on behalf of Roy E. Henderson, licensee of Station KBAL-FM, San Saba, Texas, requesting channel changes at San Saba, Brady, Llano and Hewitt, Texas. We have reviewed the proposal and find that it is unacceptable for rule making at this time.

You have requested the substitution of non-adjacent Channel 237C3 for Channel 291A at San Saba, Texas, and modification of the license for Station KBAL-FM accordingly. To accommodate the upgrade at San Saba, you have requested the substitution of Channel 294A for Channel 237A at Brady, Texas, and modification of the license for Station KNEL to specify operation on Channel 294A. You further request the substitution of Channel 294A for Channel 293A at Llano, Texas, and reallocation of Channel 294A to Hewitt, Texas, as a first local service.

A staff engineering analysis indicates that the above-requested changes can be made in compliance with the Commission's spacing requirements. Our staff analysis confirms that with MM Docket 98-198 becoming final, your proposal no longer conflicts with stations at Granbury and Waco, Texas, as substitutions have been made in those communities that are fully spaced to your proposal. We acknowledge that you have made a reimbursement commitment for the requested changes at Brady, Texas. See 15 FCC Rcd 5506 (2000). With respect to the allotment at Hewitt, Texas, sufficient information has been provided establishing Hewitt as a community for allotment purposes. The request to reallocate Channel 294A from Llano, Texas, to Hewitt, Texas, however, falls under Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community"), MM Docket No. 88-526, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Section 1.420(i) applies to permittees and licensees. Since a construction permit has not been issued for the channel at Llano, your request for a change of community is premature.

Based on the above discussion, we are returning your petition for rule making. Alternatively, you may wish to determine if other channels are available that do not require changes at Llano or refile your proposal once a construction permit has been issued for Channel 293A at Llano.

Sincerely,

A handwritten signature in dark ink, appearing to read "John A. Karousos", is written over the word "Sincerely,".

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

RECEIVED

JUN 16 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of 73.202(b)) MM Docket No. _____
Table of Allotments)
FM Broadcast Stations)
(San Saba, TX et al.))

To: John Karousos
Allocations Branch

PETITION FOR RULE MAKING

Pursuant to 47 CFR 1.420(g), Roy E. Henderson, licensee of station KBAL-FM, ch. 291A at San Saba, TX, respectfully petitions the FCC to institute a Rule Making proceeding that proposes to amend the FM Table of Allotments as follows:

- (i) to substitute ch. 237C3 for ch. 291A at San Saba, TX;
- (ii) to substitute ch. 294A for ~~ch. 293A~~ for ~~ch. 237A~~ at Brady, TX ^{1/};
- (iii) to substitute ch. 294A for ch. 293A at Llano, TX and to reallocate ch. 294A from Llano, TX to Hewitt, TX, as a first local service; ^{2/} and
- (iv) to modify the license of station KBAL-FM accordingly.

^{1/} Petitioner agrees to reimburse the licensee of station KNEF-FM, Brady, TX for the reasonable and prudent cost of changing frequencies at its present site (from ch. 237A to ch. 293A). See Columbus, Nebraska et al., 59 RR 2d 1184 (1986).

^{2/} The licensee of ch. 293A at Llano -- Elgin FM Limited Partnership -- has executed a Sworn Declaration consenting to the change of community proposal advanced in this Rulemaking. See Appendix A.

DISCUSSION

The proposed changes would serve the public interest both by allowing KBAL-FM to improve its FM service to the city of San Saba, TX and also by providing a first local aural service to the city of Hewitt, TX. ^{2/}

Hewitt is an incorporated city (in McLennan County Texas), whose 1990 Census population was 8,983 persons, an increase of more than 70% over its 1980 population. The 1998 population was estimated to have increased to 10,718. ^{4/}

Hewitt has its own schools, its own police and fire departments, and its own post office. Like other "communities" to which the FCC has allotted a local FM service, Hewitt has numerous local churches, ^{5/} local medical clinics, ^{6/} a local library, a local weekly newspaper, approximately 344 commercial business establishments, a Chamber of Commerce, several local banks and a nearby airport.

Attached hereto is a comprehensive engineering report, which both details how Petitioner's proposal is consistent with the

^{2/} See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). The Petitioner who requested the allotment of ch. 295A at Hewitt, TX --as a first local service -- has requested the dismissal of its March 29, 2000 Petition.

^{4/} Texas State Data Center (January 1, 1998 estimate).

^{5/} First United Methodist Church of Hewitt, Hewitt First Baptist Church, etc.

^{6/} Three clinics, including a branch of the highly regarded Scott & White Clinic.


FCC's rules and also confirms the availability of ch. 237C3 at San Saba. See Appendix B. ^{1/}

Moreover, the reallocation of ch. 294A from Llano to Hewitt would not deprive Llano of its sole aural service; rather, Llano still would be served by three existing FM stations. Moreover, ch. 297A, ch. 271A and ch. 289A are all available at Llano. See Appendix B, Engineering Statement, at 3.

In sum, Petitioner's proposal would result in a preferential arrangement of FM allotments. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992).

Finally, should this Petition be granted, both the Petitioner and the Llano permittee will apply for ch. 237C3 at San Saba and ch. 294A at Hewitt, respectively, and if granted CP's, each will promptly construct its new facility. ^{2/}

Respectfully submitted,


Henry E. Crawford
SMITHWICK & BELENDIUK, PC
1990 M Street, NW
Suite 510
Washington, DC 20036

June 16, 2000

^{1/} The Petitioner and all parties to MM Docket No. 00-27 (Valley Mills, Hico, Gorman and Walnut Springs, TX) have this date filed a joint request that the Petition and all other proposals and counterproposals in that docket be dismissed with prejudice.

^{2/} See Appendix A.

SWORN DECLARATION

Jose J. Garcia, Jr. does state under penalty of perjury:

1. My name is Jose Jaime Garcia, Jr. and I am Vice President of Dynamic Radio Broadcasting Corp., the corporate General Partner of Elgin FM Limited Partnership ("Elgin"), which is the applicant for a CP on ch. 293A at Llano, TX.

2. Elgin has been advised by our FCC communications counsel that the FCC staff will grant our CP for a new FM channel at Llano in the next week or so.

3. Elgin hereby consents to and requests that the FCC institute a Rulemaking proceeding seeking to substitute ch. 294A for ch. 293A at Llano and to reallocate ch. 294A from Llano to Hewitt, TX, as a first local aural service. Elgin consents to its request being submitted to the FCC in a Petition for Rulemaking to be filed by Roy E. Henderson, in connection with his request to upgrade KBAI-FM, San Saba FM TX.

4. Should the FCC substitute ch. 294A for ch. 293A at Llano and then reallocate ch. 294A from Llano to Hewitt, Elgin will file an application to construct the new station at Hewitt and, after granted a CP, will promptly build the new station.

Executed this 15th day of June, 2000.


Jose Jaime Garcia, Jr.

APPENDIX A

APPENDIX B

**ENGINEERING STATEMENT
IN SUPPORT OF
PETITION FOR RULE MAKING**

June 15, 2000

**Roy E. Henderson
Radio Station KBAL-FM
FM Channel 237C3 □ 95.3 Megahertz
San Saba, Texas**



LAWRENCE L. MORTON ASSOCIATES
2867 BELDEN DRIVE
HOLLYWOOD HILLS, CALIFORNIA 90068-1901
(323) 467-5010 / FAX (323) 467-5848

ENGINEERING STATEMENT

The information and data contained within this engineering statement were prepared on behalf of Roy E. Henderson in support of a *Petition for Rule Making*. Henderson proposes to amend the FM Table of Allotments, 47 C.F.R. § 73.202(b) of the Commission's Rules, by substituting Channel 237C3 for Channel 291A at San Saba, Texas; Channel 293A for Channel 237A at Brady, Texas; Channel 294A for Channel 293A at Llano, Texas; and by reallocating Channel 294A from Llano to Hewitt, Texas.

I. CHANNEL 237C3 AT SAN SABA, TEXAS

San Saba is located within San Saba County, Texas. The Bureau of the Census centroid geographic coordinates of San Saba, referenced to the North American Datum of 1927, are:

North Latitude: 31 degrees, 11 minutes, 43 seconds
West Longitude: 98 degrees, 43 minutes, 32 seconds

Because of station KKMJ-FM on Channel 238C1 at Austin, a site restriction is required for the Channel 237C3 allotment at San Saba. At a point corresponding to the following geographic coordinates, which is 18.2 kilometers west of San Saba, the Channel 237C3 allotment can be made at San Saba in compliance with the minimum distance separation requirements 47 C.F.R. § 73.207.

North Latitude: 31 degrees, 11 minutes, 30 seconds
West Longitude: 98 degrees, 55 minutes, 00 seconds

From these reference geographic coordinates, Channel 237C3 is fully-spaced to all current FCC assignments, allotments and proposals contained within the latest *FCC FM Engineering Database*, with two exceptions: Station KNEL-FM on Channel 237A at Brady, and a pending *Petition for Rule Making* for Channel 237C2 at Valley Mills, MM Docket No. 00-27. These will be addressed in sections II and III of this study.

Figure one shows the city limits of San Saba within San Saba County, and the permissible fully-spaced area to locate Channel 237C3 at San Saba, notwithstanding the aforementioned shorts-spaced channels. Figure two depicts the 70 dBμ F(50,50) city grade contour from a Class C3 facility operating at the proposed allotment reference site, and demonstrates that the entire city limits of San Saba are within city grade distance from the proposed allotment reference site.

II. CHANNEL 237C2 AT VALLEY MILLS, TEXAS

Valley Mills Radio Broadcasting Co. filed previously a *Petition for Rule Making*, MM Docket No. 00-27, requesting the allotment of Channel 237C2 at Valley Mills, Texas. On June 14, 2000, a joint request was filed seeking dismissal with prejudice of this proposal and related counterproposals. Thus, the proposed Channel 237C2 allotment at Valley Mills is moot with respect to the proposed Channel 237C3 allotment at San Saba.

III. KNEL-FM AT BRADY, TEXAS

Station KNEL-FM is licensed to operate on Channel 237A to serve Brady, Texas. Brady is located within McCulloch County, Texas. The KNEL-FM licensed geographic coordinate are:

North Latitude: 31 degrees, 07 minutes, 27 seconds
West Longitude: 99 degrees, 21 minutes, 34 seconds

The Channel 293A allotment reference site for Brady can remain the KNEL-FM licensed transmitter site as it is fully-spaced under § 73.207 to all other stations, save a new construction permit on Channel 293A, FCC File No. BPH-970814MI, which is addressed in section IV.

Figure three shows the city limits of Brady within McCulloch County, and the permissible fully-spaced area to locate Channel 293A at Brady.

IV. LLANO, TEXAS

Elgin FM Limited Partnership has been advised by FCC staff that its application for construction permit, FCC File No. BPH-970814MI, for a new facility on Channel 293A at Llano, Texas, will be granted in the next few days. The Petitioner proposes to change the principal community from Llano to Hewitt, and to change from Channel 293A to Channel 294A.¹

Hewitt is located within McLennan County, Texas, and has no other aural broadcast services. The 1990 U.S. Census population of Hewitt was 8,983 persons. The 1990 Census population of McLennan County was 189,123 persons, and was estimated to be 204,244 as of July 1, 1999. The Bureau of the Census centroid geographic coordinates of Hewitt are:

North Latitude: 31 degrees, 27 minutes, 04 seconds
West Longitude: 97 degrees, 11 minutes, 37 seconds

¹Elgin FM Limited Partnership's General Partner has executed a Sworn Declaration consenting to the change of principal community and channel.

A site restriction is required for the proposed Channel 294A allotment at Hewitt, caused by KXGM(FM) on Channel 294C at Muenster, Texas, MM Docket No. 98-198. At a point corresponding to the following geographic coordinates, which is 4.6 kilometers southeast of Hewitt, the Channel 294A allotment can be made at Hewitt in compliance with the minimum distance separation requirements 47 C.F.R. § 73.207.

North Latitude: 31 degrees, 25 minutes, 00 seconds
West Longitude: 97 degrees, 10 minutes, 00 seconds

From these reference geographic coordinates, Channel 294A is fully-spaced to all current FCC assignments, allotments and proposals contained within the latest *FCC FM Engineering Database*.²

Figure four depicts the city limits of Hewitt within McLennan County, and the permissible fully-spaced area to locate Channel 294A at Hewitt.

V. ALTERNATE CHANNEL AT LLANO, TEXAS

The reallocation of Channel 293A from Llano to Channel 294A at Hewitt does not preclude the possibility of a new FM service at Llano. Channel 297A is available at Llano, as are Channels 271A and 289A.

Llano is located within Llano County, Texas. There are three other commercial channels in Llano; Channels 242A, 275A and 284C3. The Bureau of the Census centroid geographic coordinates of Llano are:

North Latitude: 30 degrees, 45 minutes, 05 seconds
West Longitude: 98 degrees, 40 minutes, 26 seconds

A site restriction would be required for the allotment of Channel 297A at Llano, caused by KLKX(FM) on Channel 297A at Nolanville, Texas. At a point corresponding to the following geographic coordinates, which is 7.3 kilometers west of Llano, the Channel 297A allotment could be made at Llano.

North Latitude: 30 degrees, 45 minutes, 00 seconds
West Longitude: 98 degrees, 45 minutes, 00 seconds

From these reference geographic coordinates, Channel 297A would be fully-spaced to all current FCC assignments, allotments and proposals.

²The FCC FM Engineering Database still shows KDXT-FM on Channel 294C at Granbury, Texas, and KWBU(FM) on Channel 296A at Waco, Texas, which would be short-spaced to the proposed allotment reference site at Hewitt. However, KDXT-FM has changed to Channel 296C1 at Benbrook, Texas, and KWBU(FM) has changed to Channel 277A, MM Docket No. 98-198.

Figure five shows the city limits of Llano within Llano County, and the permissible fully-spaced area to locate potential Channel 297A.

VI. CONCLUSION

The results of this study demonstrate that the FM Table of Allotments in § 73.202(b) of the Commission's Rules may be amended in technical compliance with all applicable spacing rules. Therefore, the Petitioner, Roy E. Henderson, respectfully requests the following changes to the Table:

<u>PRESENT</u>	
<u>CITY</u>	<u>CHANNEL</u>
San Saba, TX	291A
Brady, TX	237A
Llano, TX	242A, 275A, 284C3, 293A
Hewitt, TX	-----

<u>PROPOSED</u>	
<u>CITY</u>	<u>CHANNEL</u>
San Saba, TX	237C3
Brady, TX	293A
Llano, TX	242A, 275A, 284C3
Hewitt, TX	294A

Respectfully Submitted,

**Lawrence L. Morton, P.E.
Consulting Engineer to the Petitioner
June 15, 2000**



Lambert Azimuthal Equal-Area

10' 00" Graticule Spacing

CENTER OF MAP:

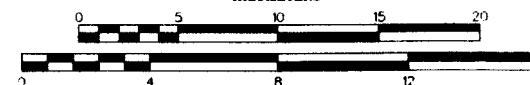
N LAT 31° 11' 32.00"

W LON 98° 42' 24.00"

Scale 1 : 380,160

FIGURE 1
CITY OF SAN SABA
COUNTY OF SAN SABA
ROY E. HENDERSON

KILOMETERS



STATUTE MILES



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Hollywood Hills, California

GOLDTHWAITE

RICHLAND SPRINGS

CHANNEL 237C3 ALLOTMENT REFERENCE SITE

SAN SABA

LOMETA

Spaced Area

San Saba County

31°30'00" +
98°10'00" +

98°00'00" +

98°50'00" +

98°40'00" +

31°20'00" +

+

+

+

+

31°20'00" +

31°10'00" +

+

+

+

+

31°10'00" +

31°00'00" +
98°10'00" +

98°00'00" +

98°50'00" +

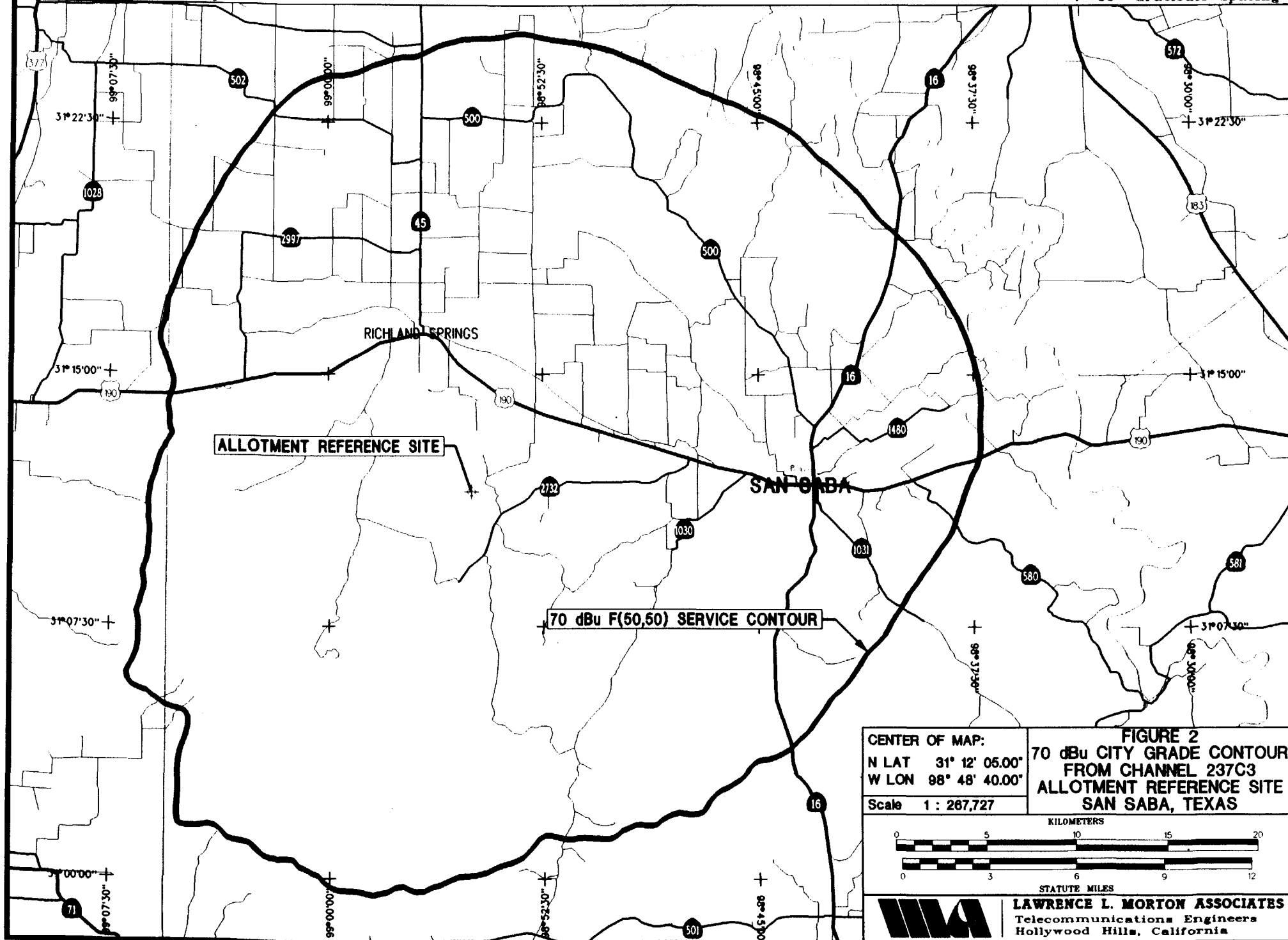
98°40'00" +

98°30'00" +

31°00'00" +
98°20'00" +

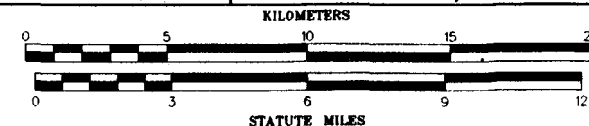
Lambert Azimuthal Equal-Area

7' 30" Graticule Spacing



CENTER OF MAP:
N LAT 31° 12' 05.00"
W LON 98° 48' 40.00"
Scale 1 : 267,727

FIGURE 2
70 dBu CITY GRADE CONTOUR
FROM CHANNEL 237C3
ALLOTMENT REFERENCE SITE
SAN SABA, TEXAS



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Hollywood Hills, California

Lambert Azimuthal Equal-Area

10' 00" Graticule Spacing

CENTER OF MAP:

N LAT 31° 13' 52.00"

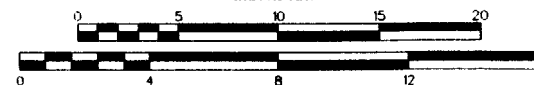
W LONG 99° 12' 19.00"

Scale 1 : 378,165

FIGURE 3

CITY OF BRADY
COUNTY OF MCCULLOCH
ROY E. HENDERSON

KILOMETERS



STATUTE MILES



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Hollywood Hills, California

Mcculloch County

MELVIN

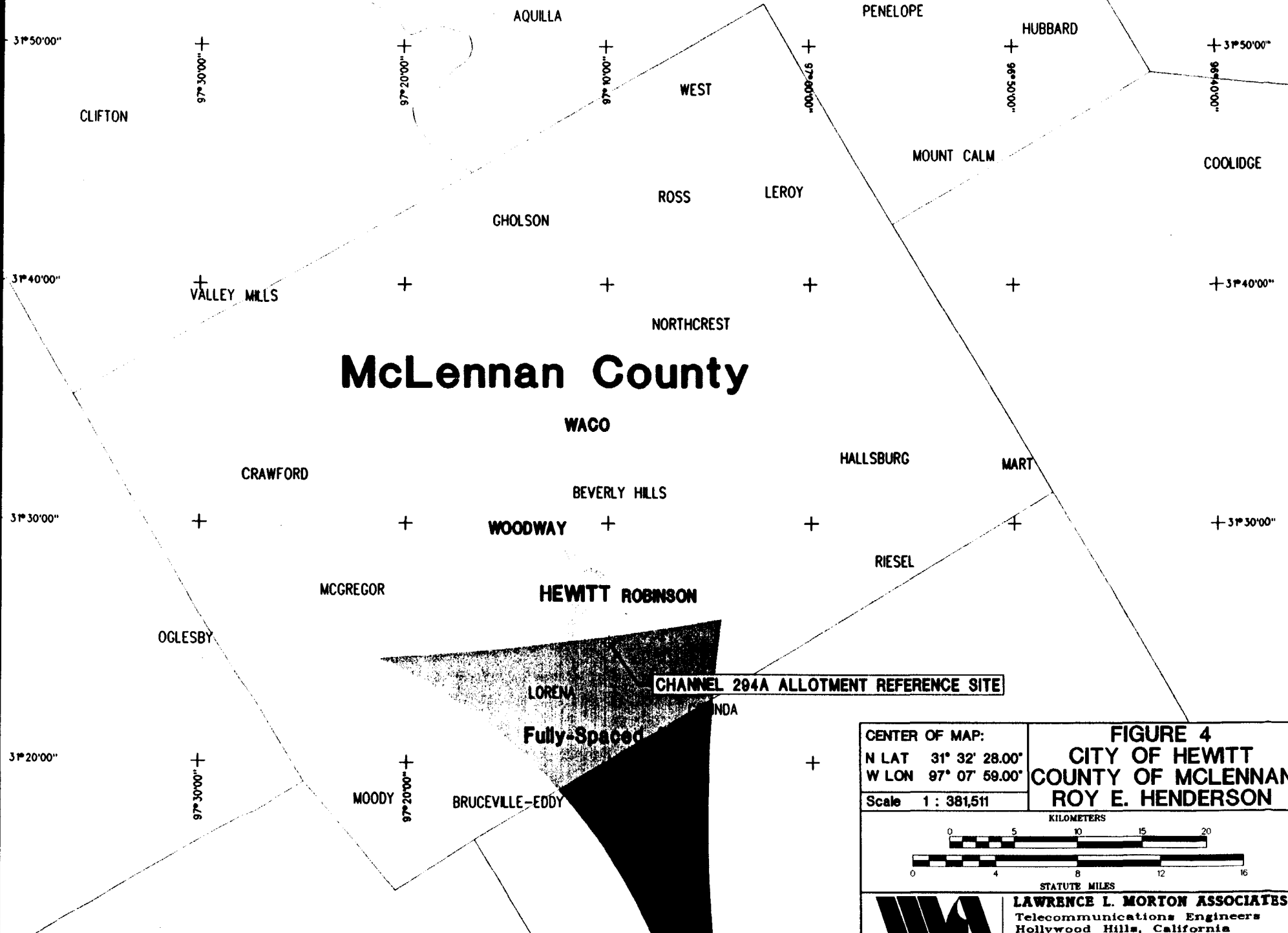
RICHLAND SPRINGS

SAN SABA

CHANNEL 293A ALLOTMENT REFERENCE SITE

FULLY SPECIFIED SITE

McLennan County

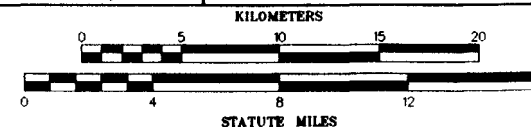


CENTER OF MAP:

N LAT 31° 32' 28.00"
W LON 97° 07' 59.00"

Scale 1 : 381,511

FIGURE 4
CITY OF HEWITT
COUNTY OF MCLENNAN
ROY E. HENDERSON



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Hollywood Hills, California

Lambert Azimuthal Equal-Area

7' 30" Graticule Spacing

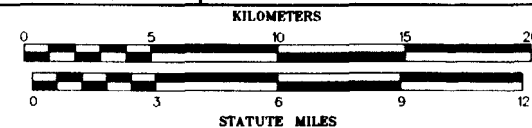
CENTER OF MAP:

N LAT 30° 43' 47.00"

W LON 98° 38' 41.00"

Scale 1 : 299,799

FIGURE 5
CITY OF LLANO
COUNTY OF LLANO
ROY E. HENDERSON



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Hollywood Hills, California

ly-Spaced Area

CHANNEL 297A ALLOTMENT REFERENCE SITE

LLANO

Llano County

Buchanan Dam

Kingsland

GRANITE SHOALS

MARBLE FALLS

MEADOWLAKES
COTTONWOOD SHORES

Horseshoe Bay

30° 30' 00" +
98° 00' 00" +

98° 52' 30" +

98° 45' 00" +

98° 37' 30" +

98° 30' 00" +

98° 22' 30" +

98° 15' 00" +

30° 45' 00" +

30° 37' 30" +

30° 30' 00" +

AFFIDAVIT

State of California)
) ss:
County of Los Angeles)

Lawrence L. Morton, being first duly sworn upon oath, deposes and says:

- That he is a qualified engineer,
- That he is a Registered Professional Engineer in the State of California,
- That he is a member of the Association of Federal Communications Consulting Engineers,
- That his qualifications are a matter of record with the Federal Communications Commission,
- That he has prepared many broadcast applications and engineering exhibits that have been filed with and granted by the Federal Communications Commission,
- That he has carried out such engineering work and that the results thereof are attached hereto and form part of this affidavit, and
- That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge.

Date: June 15, 2000

ORIGINAL COPY SIGNED

Lawrence L. Morton, P.E.

On June 15, 2000, before me, Linda Lu, a Notary Public, in and for the State of California, personally appeared Lawrence L. Morton known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

My Commission expires 11/30/2001

ORIGINAL COPY NOTARIZED

Notary Public